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T-D

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/139,298 08/25/98 ANDERSON

R ARM-11206/06

EXAMINER

IM52/0214

SMEUNER, C PAPER NUMBER

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DATE MAILED:

02/14/01

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. 09/139,298	Applicant(s) Anderson
	Examiner Curtis E. Sherrer	Group Art Unit 1761

Responsive to communication(s) filed on Dec 1, 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claim

Claim(s) 1-8, 12-14, and 16-19 is/are pending in the application.

Of the above, claim(s) 12-14 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-8 and 16-19 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

**-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --**

### Part III DETAILED ACTION

#### *Priority*

1. It is noted that this application appears to claim subject matter disclosed in prior copending Application No. 08/940,107, filed 9/29/97. The current status of all nonprovisional parent applications referenced should be included.

#### *Drawings*

2. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

#### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-8 and 16-19 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has amended the claims with the phrase "means for receiving" and specifical basis for this phrase was not found.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 3 and 17 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claims 3 and 17 are of the same scope, i.e., both refer to the electronic customer interface.

*Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-8 and 16-19 are rejected under 35 U.S.C. § 103 as being unpatentable over Litwak (Supermarket Business) or Muskai (PC Magazine) in view Stear (Handbook of Breadmaking Technology) and in further view of Stern et al. (U.S. Pat. No. 5,054,059).

10. Litwak, Muskai and Stear teach that cited in previous Office Actions. They do not teach a direct electrical link between the customer and the apparatus that produces the bread. Stern et al broadly teach the use of a telephone dialing system that utilizes means as set forth in col. 1, lines 28-48, for the "automated telephone ordering system for the purchase of goods" (col. 1,

lines 22-23). It would have been obvious to those of ordinary skill in the art to utilize an automated communications device, as disclosed by Sterns et al, in the automated process of producing bread, as disclosed by Litwak or Muskai in view of Stear for its notoriously well known benefits of reducing manpower, ease of use, etc.

11. As to the placement of the variously claimed means within a housing, it is considered that a building is broadly a housing and therefore this limitation is anticipated.

*Response to Arguments*

12. Applicant's arguments filed 12/01/00 have been fully considered but they are not persuasive.

Applicant argues that the prior art does not teach or make obvious the instantly claimed invention because "the prior art [] is directed to a different problem." In response to Applicant's argument, the fact that Applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

13. Applicant states that the prior art teachings do not disclose "a consumer to select a grain based product from a variety of recipes utilizing different ingredients and producing a freshly

baked product for the consumer with no other human involvement." The above rejection has been made to overcome this deficiency.

*Conclusion*

14. No claim is allowed.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bullas (USPN 3,746,130) and Cotter (USPN 4,797,818) disclose automated means of accessing products, such as food.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30. The **fax phone number** for this Group is (703)-305-3602.

17. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Curtis E. Sherrer  
Primary Examiner  
February 8, 2001